

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DAVID HERRICK,

Defendant.

CASE NO. 8:05CR311

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s Statement (Filing No. 22). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

Paragraph 12 of the includes an agreement that the adjusted offense level shall be 22, based on the parties' assumed sentencing guideline calculation. However, the PSR reflects an adjusted offense level of 16 and a total offense level of 13. The Defendant's statement explains the reason for the discrepancy in calculations, and states that the parties will move to amend the plea agreement at sentencing to reflect the guideline calculation that appears in the PSR. Absent unusual circumstances, the Court intends to approve the amended plea agreement. The Court advises the parties that they shall prepare for filing a copy of the plea agreement amended by interlineation.

IT IS ORDERED:

1. The Court's tentative finding is that the Defendant's request in the Statement (Filing No. 22) is granted;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 31st day of January, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge